

GENERAL INFORMATION ON APPEALS

of

Agricultural Permits

Purpose

This brochure is designed to help explain the steps to be followed in appealing final permit decisions made by the SC Department of Health and Environmental Control (DHEC) on Agricultural Projects.

Notifying the Public

If a public hearing is held on a proposed facility, DHEC will give notice of the decision to all persons who signed the register at the public hearing along with those who submitted comments and/or petitions of the decision and place the decision in a newspaper of general circulation in the area of the proposed facility. If a public hearing is not held, DHEC will give notice to all persons who submitted comments or attended any DHEC meetings on the proposed facility and place the decision in a newspaper of general circulation in the area of the proposed facility. This notification will be the staff's final decision, commonly referred to as a final determination. After a final determination, a person has fifteen (15) days to request a formal administrative appeal of the staff's decision. In your appeal you must:

- 1. State the reasons why you disagree with the Department's decision;**
- 2. Tell how you are adversely affected by the decision;**
- 3. List the action(s) that you want the Department to take in lieu of its decision.**

The final determination will contain the specifics on how to request an adjudicatory hearing. Appeals must be filed with the:

*Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201.*

Staff's Decision Is Appealed

Upon receipt of an appeal, the Department's legal office will forward the appeal to the State's Administrative Law Judge Division for assignment to an Administrative Law Judge (ALJ). The ALJ will hear the case under the procedures established by the "Administrative Procedures Act" (APA) for contested cases in Volume 25, Code of Laws of South Carolina, 1976, Chapter 61, Rule 61-72, and the ALJ Division Procedures.

When an appeal is filed on a new or reissued permit, the entire permit is automatically stayed until the administrative appeal process is completed unless the ALJ determines otherwise. For permit modifications, only the modifications are automatically stayed. For permits being reissued, the previous permit remains in effect (if a timely and complete application for renewal was filed) until the administrative appeal process is completed.

What Happens at the Adjudicatory Hearing?

In an adjudicatory hearing, the rules of Circuit Court generally apply. This means that depositions may be taken and also sworn testimony presented with witnesses being questioned by attorneys from each side. At the conclusion of the hearing, the ALJ will issue a ruling. All parties involved in the Adjudicatory Hearing have thirty (30) days to appeal the ALJ's decision to the DHEC Board.

Appeal of the Administrative Law Judge's Ruling to the DHEC Board

When the ALJ's decision is appealed, the Board may under appropriate circumstances accept the ALJ's ruling or may make whatever decision it feels is appropriate. At a regularly scheduled monthly Board meeting, the attorneys for each side will be given the opportunity to briefly state their case before the Board. The Board will then make the final decision for the agency.

Following the Board's decision, any affected party has thirty (30) days to appeal. The appeal of the Board's decision is to a Circuit Court. The APA governs the appeal process. If an appeal is not filed in Circuit Court, the Board's decision will determine the final status of the proposed permit. If an appeal is filed, then the court's decision will determine the final status of the proposed permit. An appeal to the Circuit Court does not automatically stay the Board's decision.

No Appeal of ALJ's Ruling

If no appeal of the ALJ's decision is made to the DHEC Board, the ALJ's decision is final. The ALJ's ruling determines the final status of the proposed permit.

For more information on appeals, contact:

Legal Office
SCDHEC
2600 Bull Street
Columbia, SC 29201
Telephone # (803) 898-3350

To obtain copies of permit determinations and other related information, contact:

Freedom of Information Administrator
SCDHEC
Freedom of Information Office
2600 Bull Street
Columbia, SC 29201
Telephone # (803) 898-3882.

SCDHEC
Bureau of Water
2600 Bull Street
Columbia, SC 29201
(803)8984-4300